common law of the state. The Constitution of the United States and the laws made under it are the laws of the state because expressly adopted by the people of the state.[9] The federal courts are, therefore, courts of the state, and as such administer state laws. That the federal court may differ from the state court in its interpretation of the common law, as in the principal case it differed from it in the interpretation of a statute, is due to the fact that they are courts of co-ordinate power with no common superior. Such difference in interpretation results in uncertainty as to what is the law but does not create two systems of law upon the same subject-matter. The conception of a federal common law as a "general system of jurisprudence hovering over local legislation and filling up its interstices" [10] is fundamentally opposed to the basic principle of our common law that there is no law apart from territory.

SUCCESSIVE ASSIGNEES OF A MORTGAGE DEBT, EACH WITH A LEGAL RES. — Both the courts which regulate the rights of successive assignees of the same *chose in action* by priority of notice to the obligor [1] and those which apply the rule of priority of assignment [2] agree that where the obligation is contained in an instrument the assignee who obtains the instrument prevails.[3] This harmony of opinion results from the general policy of equity not to deprive a purchaser of any legal advantage which he has acquired without taint of conscience. In applying this doctrine the courts have gone to great lengths. For example, when a party to an action had a common law right to refuse to testify, equity would not grant against a *bona fide* purchaser a bill for the discovery of evidence which would prejudice him in his honestly purchased rights.[4] Nor would it, in an action of ejectment, restrain him from setting up the purely technical and unmeritorious plea of a satisfied outstanding term in a third person.

In view of these principles, facts such as are presented by a late New York case seem to raise a rather complicated question. The obligee of a bond secured by mortgage assigned the debt and delivered the bond to A. Later he assigned the same debt to B, to whom he surrendered the mortgage deed. Both A and B were *bona fide* purchasers for value. *Syracuse Savings Bank* v. *Merrick*, 96 N. Y. App. Div. 581. The court was relieved of the necessity of deciding the case on its merits because A had failed to record his assignment as required by statute, but the same case has arisen where consideration of the registry system was not involved. The courts, starting with the well established rule of mortgage law that an assignment of the debt carries with it the security,[5] have held that A, who gets the debt by getting the instrument containing the obligation, is entitled to preference whether the assignment to him precedes [6] or follows [7] that to B.

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[9] Simonton, The Federal Courts, 2d ed., 31; see McCulloch *v.* Maryland, 4 Wheat. (U. S.) 316, 403.

[10] Duponceau, Jurisdiction of Federal Courts 87.

[1] English, etc., Trust *v.* Brunton, [1892] 2 Q. B. 1; Third Nat. Bank of Philadelphia *v.* Atlantic City, 126 Fed. Rep. 413.

[2] Putnam *v.* Story, 132 Mass. 205.

[3] Bridge *v.* Connecticut Life Ins. Co., 152 Mass. 343; see *Re* Gillespie, 15 Fed. Rep. 734.

[4] See Emmerson *v.* Ind, Coope & Co., 33 Ch. D. 323.

[5] Whittemore *v.* Gibbs, 24 N. H. 484.

[6] Morris *v.* Bacon, 123 Mass. 58.

[7] Kernohan *v.* Manss, 53 Oh. St. 118; Boyle *v.* Lybrand, 113 Wis. 79.

Do these decisions deprive B of a legal right which he has obtained for value and without a charge upon his conscience? The answer must depend entirely upon the right which he actually gets by his bargain. And it would seem that he gets nothing more than a security title which he is only conditionally entitled to retain. If the obligee first assigns to B and delivers the mortgage but retains the bond, he must hold the bond on a constructive trust for the benefit of B. B holds the mortgage title as security for the payment of the debt, but with full knowledge that it is a mere security title. Consequently, he must be taken to know that his right to retain that security depends wholly upon his interest as *cestui que trust* in having the debt paid to his trustee. He, of course, intends to perfect his right to the security by later obtaining possession of the bond; but if in the meantime the obligee, in violation of the constructive trust, assigns and delivers the bond to A, who has no notice of the trust, B's rights as *cestui* sink, and his right to the security perishes with them. The same conclusion must be reached where A's assignment is prior, for the measure of B's right in that which he knowingly takes as security is his right in the obligation secured.

RIGHT TO TRIAL BY JURY IN CRIMINAL CASES UNDER THE FOURTEENTH AMENDMENT. — The fourteenth amendment to the Constitution of the United States provides that no state shall "deprive any person of life, liberty, or property, without due process of law." From state legislation which would infringe this right to "due process," an appeal lies to the federal courts.[1] The District Court of the Southern District of Georgia lately decided that this amendment guarantees a jury trial to municipal offenders sentenced to infamous punishment; and that a Georgia statute providing for the summary infliction of such punishment was unconstitutional. *Jamison* v. *Wimbish*, 130 Fed. Rep. 351. This case raises the question how far the amendment necessitates a jury trial in criminal cases. The courts which have interpreted the amendment most favorably for the principal case have gone no further than to say that it confirmed this right in all cases where the accused had it by the system of law obtaining in the state prosecuting him, at the time of the adoption of the amendment.[2] From the earliest times magistrates have exercised summary jurisdiction over municipal offenses.[3] This was the practice in Georgia at the time the amendment was adopted.[4] Nor does the infliction of infamous punishment entitle the prisoner to a jury trial. Such punishments were imposed summarily by justices of the peace at common law.[5] If then cases such as the principal case were dealt with summarily by the common law of Georgia at the time the amendment was adopted, and infamous punishment could be inflicted by a court without a jury, the constitutional provision was not violated by the Georgia statute.

It is not proposed, however, to reach this result merely on the ground that the principal case is not within even the above interpretation of the amend-

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[1] Allen *v.* Georgia, 166 U. S. 138, 140; Wilson *v.* North Carolina, 169 U. S. 586, 593.

[2] Callan *v.* Wilson, 127 U. S. 540, 549; *In re* Kemmler, 136 U. S. 436, 448.

[3] See Byers *v.* Commonwealth, 42 Pa. St. 89; Green *v.* Superior Court of San Francisco, 78 Cal. 556.

[4] Williams *v.* City Council of Augusta, 4 Ga. 509; Floyd *v.* Commissioners of Eatontown, 14 Ga. 354.

[5] See 3 Burn, Justice of the Peace, 30th ed., 142; see also St. of James I., c. 4.